

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Nadine Gazzola, individually, and as co-owner, President, and as BATFE Federal Firearms Licensee Responsible Person for Zero Tolerance Manufacturing, Inc.; Seth Gazzola, individually, and as co-owner, Vice President, and as BATFE FFL Responsible Person for Zero Tolerance Manufacturing, Inc.; John A. Hanusik, individually, and as owner and as BATFE FFL Responsible Person for d/b/a “AGA Sales”; Jim Ingerick, individually, and as owner and as BATFE FFL Responsible Person for Ingerick’s, LLC, d/b/a “Avon Gun & Hunting Supply”; Christopher Martello, individually, and as owner and as BATFE FFL Responsible Person for Performance Paintball, Inc., d/b/a “Ikkin Arms,”; Michael Mastrogiovanni, individually, and as owner and as BATFE FFL Responsible Person for “Spur Shooters Supply”; Robert Owens, individually, and as owner and as BATFE FFL Responsible Person for “Thousand Islands Armory”; Craig Serafini, individually, and as owner and as BATFE FFL Responsible Person for Upstate Guns and Ammo, LLC; Nick Affronti, individually, and as BATFE FFL Responsible Person for “East Side Traders LLC”; and Empire State Arms Collectors, Inc.;

Plaintiffs,

-against-

KATHLEEN HOCHUL, in her official capacity as Governor of the State of New York; STEVEN A. NIGRELLI, in his Official Capacity as the Acting Superintendent of the New York State Police; ROSSANA ROSADO, in her Official Capacity as the Commissioner of the Department of Criminal Justice Services of the New York State Police; and LETITIA JAMES, in her official capacity as Attorney General of the State of New York.

Defendants.

**ATTORNEY
DECLARATION**

1:22-cv-1134
(BKS/DJS)

Aimee Cowan, pursuant to § 1746 of Title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an Assistant Attorney General for the State of New York and appear in this

action on behalf of KATHLEEN HOCHUL, in her official capacity as Governor of the State of New York; STEVEN A. NIGRELLI, in his Official Capacity as the Acting Superintendent of the New York State Police; ROSSANA ROSADO, in her Official Capacity as the Commissioner of the Department of Criminal Justice Services of the New York State Police; and LETITIA JAMES, in her official capacity as Attorney General of the State of New York (“Defendants”), in this action.

2. I make this Declaration in support of Defendants’ motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. §12(b)(6) and for lack of subject matter jurisdiction under Fed. R. Civ. P. §12(b)(1).

RELVANT FACTUAL AND PROCEDURAL HISTORY

3. Plaintiffs filed their Complaint on November 1, 2022. (ECF No. 1).

4. On November 8, 2022, Plaintiffs filed a motion for a preliminary injunction and/or temporary restraining order. (ECF Nos. 13, 15, 16, 17).

5. After a conference with the parties on November 10, 2022, the Court stayed Defendants’ deadline to answer the Complaint, pending the parties’ briefing on Plaintiffs’ request for injunctive relief. (*See*, Text Minute Entry entered November 10, 2022).

6. Oral argument was held before Chief District Judge Brenda K. Sannes on December 1, 2022. (*See*, Text Minute Entry entered December 2, 2022).

7. After oral argument on December 1, 2022, the Court issued a Text Order on December 2, 2022, and subsequently filed a Memorandum-Decision and Order on December 7, 2022, denying Plaintiffs’ motion for a temporary restraining order and denying Plaintiffs’ motion for a preliminary injunction. (ECF No. 42).

8. Plaintiffs filed a notice of appeal on December 2, 2022, following the Court’s text

order. (ECF No. 38). Plaintiffs further filed an “emergency motion” to the Second Circuit Court of Appeals on December 6, 2022. (ECF No. 41).

9. On December 19, 2022, Defendants requested that the District Court stay all further deadlines in this matter until the resolution of the pending Second Circuit appeal (CA 22-3068). (ECF No. 44). This Court granted that request in part, staying all deadlines pending the Second Circuit’s decision on Plaintiffs’ emergency motion to stay. (ECF No. 45). Defendants were directed to notify the Court of the Second Circuit’s ruling on the motion, and this Court directed Defendants to answer Plaintiffs’ Complaint thirty days from the date of the ruling. (*Id.*).

10. The Second Circuit rendered a decision on December 21, 2022, denying Plaintiffs’ emergency motion to stay. *See, Gazzola v. Hochul*, No. 22-3068, 2022 WL 18401354 (2d Cir. Dec. 21, 2022). The Second Circuit Court of Appeals ordered an expedited briefing schedule for Plaintiffs’ appeal, setting appellants’ brief due date for January 25, 2023, and appellees’ brief due date for March 1, 2023. (CA 22-3068, Docket No. 37).

11. Plaintiffs filed an emergency motion to stay with the Supreme Court of the United States on December 29, 2022. The application was denied. *See, Gazzola v. Hochul*, No. 22A591, 2023 WL 221511 (U.S. Jan. 18, 2023). Plaintiffs further filed a petition for writ of certiorari on January 4, 2023. (No. 22-622). That application is still pending.

12. On December 23, 2022, Defendants requested an extension to answer Plaintiffs’ Complaint (ECF No. 47) and the Court granted the request, extending the deadline to February 28, 2023. (ECF No. 48).

13. Defendants now move for an order pursuant to Fed. R. Civ. P. §12(b)(6) and §12(b)(1) dismissing Plaintiffs’ Complaint in its entirety, with prejudice.

Dated: February 28, 2023
Syracuse, New York

s/ *Aimee Cowan*
Aimee Cowan, Esq.
Assistant Attorney General